

- *Enlargement of time for filing proof of claim*
- *"Excusable neglect"*
- *Rules 9006, 3002(c)*

IN THE UNITED STATES BANKRUPTCY COURT

FILED

FOR THE

at 11 O'clock & 28 min. A M

SOUTHERN DISTRICT OF GEORGIA
Savannah Division

Date 7/14/89

MARY C. BOSTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *pcB*

In the matter of:

MICHAEL J. CESARONI, JR.
d/b/a M. J. Cesaroni, Jr.,
Seafood Company

Debtor

Chapter 7 Case

Number 82-40337

MEMORANDUM AND ORDER SUSTAINING TRUSTEE'S OBJECTION TO CLAIM

This case is before the Court on objection by the Trustee to the claim of Standard Hardware Company of Fernandina Beach, Florida ("Standard"). After consideration of the evidence adduced at trial and the briefs submitted by the parties, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Debtor filed his Chapter 7 petition on July 27, 1982, and a meeting of creditors was held August 26, 1982, at which Standard was present. On November 5, 1982, an Order approving the Trustee's report of no distribution and the closing

of the estate was approved.

Thereafter new assets were uncovered and the case was ordered reopened on March 30, 1984. On December 12, 1984, an Order and Notice of Trustee's motion to approve compromise and payment of attorney's fees and expenses was approved. The Clerk's recorded entry shows that on December 13, 1984, a copy of said notice was sent to each of 43 interested parties, including Standard. That notice stated inter alia, that a compromise settlement had been reached in a civil case regarding this estate for a certain set sum and constitutes constructive notice that money was coming into the estate. On February 25, 1985, notice was sent to all creditors to file their proofs of claim. The Clerk's entry in the record shows that Standard was among the 43 interested parties that received said notice. The statutory claims bar date was May 28, 1985.

On September 10, 1986, Standard filed its proof of claim. On March 31, 1989, the Trustee filed his objection to Standard's claim.

CONCLUSIONS OF LAW

The Trustee bases his objection to Standard's

claim on the ground that Standard failed to meet the statutory claims bar date of May 28, 1985. Standard claims that it never received notice of distribution of further assets in this case. Standard further argues that it is a secured creditor, and is under no time limits for filing any proof of claim short of the closing of the case. Although Standard may have held the status of a secured creditor at one time, it lost that status when a prior mortgagee foreclosed on the collateral and therefore now stands before this Court as an unsecured creditor. 11 U.S.C. §506. O.C.G.A. §11-1-201(37).

The time for filing a proof of claim or interest in a Chapter 7 liquidation case is governed by Bankruptcy Rule 3002(c). Rule 3002(c)(5) provides that if notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within ninety (90) days after the mailing of the notice. Bankruptcy Rule 9006 deals with the subject of "time", and subdivision (b) deals with the subject of "enlargement". Part (3) of subdivision (b) is entitled "Enlargement Limited", and essentially provides, in regard to the question before the Court, that the court may enlarge the time for taking action under Rule 3002(c) "only to the extent and under the conditions stated in"

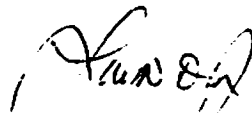
that rule. Rule 9006 permits a court to enlarge a period of time for performing an act, after expiration of the original period of time, "where the failure to act was the result of excuseable neglect". In re Kennedy, 40 B.R. 558 (Bankr. N.D.Ala. 1984). However, whether there was "excuseable neglect" or not, the Rules of Bankruptcy Procedure do not permit the Court to extend the time for filing of a proof of a creditor's claim except as permitted in the specific rule which provides the time during which a proof of claim may be filed. Id. Rule 3002(c) which governs the time for filing of proofs of claim in a Chapter 7 liquidation case makes no provision for extending such time beyond the statutory ninety (90) day bar date. I therefore conclude that the Trustee's objection to Standard's proof of claim shall be sustained.

In the case before this Court Standard had actual notice that a compromise settlement had been reached. The Clerk's entry in the record shows that said notice was sent out on December 13, 1984. A further Clerk's recorded entry shows that a notice of possible dividend was sent to Standard on February 25, 1985. Said notice set a claims bar date of May 28, 1985. There is no evidence that Standard made any attempt to file prior to September 10, 1986, sixteen months after the May 28, 1985, bar date.

In the alternative, Standard argues that under 11 U.S.C. Section 501(c) the Trustee and/or the Debtor can still file a proof of claim for Standard. This Court need not address this issue as Standard is before this Court in response to the Trustee's objection to its proof of claim.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the proof of claim filed by Standard Hardware Company of Fernandina Beach, Florida, is denied.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia
This 14th day of July, 1989.